

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
Southern Division

HEATHER THOMPSON SHAI,

Plaintiff

v.

Case No. WMN 02-CV-335

COMSYS INFORMATION TECH-  
NOLOGY SERVICES, INC.,

Defendant

MOTION OF DEFENDANT FOR LEAVE TO FILE  
REBUTTAL AND OPPOSITION TO MOTION TO STRIKE

Defendant COMSYS Information Technology Services, Inc. (“COMSYS”), by undersigned counsel, pursuant to Local Rule 105(a)(2), moves for leave to file the rebuttal portion of the Defendant’s Rebuttal Memorandum in Opposition to Petition for Attorney’s Fees and Reply Memorandum in Support of Motion for Relief from Judgment electronically filed on November 14, 2003; and COMSYS opposes the Motion of Plaintiff Heather Thompson Shai to strike the rebuttal portion of the Memorandum. As reasons therefor, COMSYS states:

1. The most important issue presented by the Petition for Attorney’s Fees was not raised by the Petition, but only by the Opposition filed by COMSYS. (That issue was the preclusion of attorney’s fees claims in the Rule 68 offer of judgment.) Thus the first time that COMSYS had an opportunity to learn of Plaintiff’s arguments regarding that

issue was by reading Plaintiff's Reply Memorandum. If COMSYS were not permitted to respond on the merits on this issue by means of a rebuttal memorandum, there would be no way for COMSYS to respond to Plaintiff's arguments at all. COMSYS is not asking for "two bites of the apple," only a first bite at arguments which, if Plaintiff had been straightforward about what she certainly knew was going to be the central issue, Plaintiff would have presented in Plaintiff's original Petition, and not held back.

2. The arguments presented in the Rebuttal portion of the Memorandum are restricted to responses to what was stated in Plaintiff's Reply. These arguments are substantive and important, and articulate views COMSYS could not have raised earlier because the arguments they respond to had not been presented earlier. "Garden variety" fee petition issues properly presented on the face of the Petition had in fact been responded to in the Opposition, and were not raised again in the rebuttal portion of the Memorandum.

3. In short, the function of the Rebuttal portion of the Memorandum is *only* that which under ordinary circumstances would be carried out by a Opposition, except that here there was no possibility of doing so by means of the Opposition. Consequently there should be an opportunity to accomplish this legitimate end by other means.

With apologies to the Court for not requesting leave in advance, having overlooked the relevant Local Rule, COMSYS therefore requests leave to file the entire Memorandum. A proposed order is enclosed.

/s/

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Attorney for Defendant COMSYS  
Information Technology Services, Inc.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2003, a copy of the  
aforegoing was served by e-mail upon:

Douglas Taylor, Esq.  
Mary Henry, Esq.  
Farber Taylor, LLC  
1 Central Plaza  
11300 Rockville Pike, Suite 808  
Rockville, Maryland 20852-3010

/s/

Jack L. B. Gohn

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ORDER

HAVING READ AND CONSIDERED the Motion of Plaintiff to Strike Defendant's Surreply to Plaintiff's Reply to Defendant's Opposition to Plaintiff's Petition for Attorney's Fees, and HAVING READ AND CONSIDERED the Motion of Defendant for Leave to File Rebuttal, it is this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by the United States District Court for the District of Maryland, ORDERED THAT:

1. The Motion of Plaintiff to Strike Defendant's Surreply to Plaintiff's Reply to Defendant's Opposition to Plaintiff's Petition for Attorney's Fees be and the same hereby is DENIED;
2. The Motion of Defendant for Leave to File Rebuttal be and the same hereby is GRANTED;

3. The Clerk is directed to accept for filing the entirety of Defendant's Rebuttal Memorandum in Opposition to Petition for Attorney's Fees and Reply Memorandum in Support of Motion for Relief from Judgment; and

4. The Clerk is directed to send copies of this Order to all counsel.

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United States District Judge

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